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JUL 31 2019  
Department of Water Resources  
Eastern Region

*Attorneys for the Idaho Department of Fish and Game  
and the Idaho Water Resource Board*

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 74-16187 IN THE )  
NAME OF KURT W. BIRD and )  
JANET E. BIRD )  
\_\_\_\_\_ )

AFFIDAVIT OF MICHAEL  
C. ORR IN SUPPORT OF  
JOINT MOTION FOR PARTIAL  
SUMMARY JUDGMENT

STATE OF IDAHO )  
 ) ss.  
County of Ada )

Michael C. Orr, having been duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years and one of the attorneys of record for the Idaho Water Resource Board ("IWRB") and the Idaho Department of fish and Game State of Idaho ("IDFG") in the above-captioned proceeding. I make this affidavit based upon my own personal knowledge regarding the matters addressed herein.
2. Attached hereto as **Exhibit 151** is a true and correct copy of the document entitled "Permit Application through Legal Notice & Request for Comment Letters" that I

caused to be printed from the “Documents” for application no. 74-16187 in the Department of Water Resources’ public-access water right search database (<https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>);

3. Attached hereto as exhibits are true and correct copies of certain documents that I caused to be printed from the “Documents” for water right no. 74-15613 in the Department of Water Resources’ public-access water right search database (<https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>), and more particularly described as follows:

- a. Attached hereto as **Exhibit 152** is a true and correct copy of the *Final Order* of May 10, 2011;
- b. Attached hereto as **Exhibit 153** is a true and correct copy of the *Order Denying Petitions for Reconsideration* of June 13, 2011;
- c. Attached hereto as **Exhibit 154** is a true and correct copy of the “State of Idaho’s Amended Exhibit List” dated February 6, 2007;
- d. Attached hereto as **Exhibit 155** is a true and correct copy of “Compendium of Documents Related to the Snake River Basin Adjudication and the Nez Perce Water Rights Settlement,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 3;
- e. Attached hereto as **Exhibit 156** is a true and correct copy of “Memorandum of Agreement Between the State of Idaho, the Nez Perce Tribe, the United States Fish and Wildlife Service, and National Marine Fisheries Service Establishing a Collaboration Process for Making Recommendations to the State of Idaho Concerning Use of the State

Section 6 Account of the Snake River Basin Adjudication Agreement of 2004 Habitat Trust Fund,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 4;

- f. Attached hereto as **Exhibit 157** is a true and correct copy of “Consolidated Subcase No: 75-13316: Order Approving Stipulation and Entry of Partial Decrees,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 5;
- g. Attached hereto as **Exhibit 158** is a true and correct copy of “Idaho PCSRF Application Form – FY2005 (03305SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 6;
- h. Attached hereto as **Exhibit 159** is a true and correct copy of “Letter dated July 3, 2006 to Bill Graham (03305SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 7;
- i. Attached hereto as **Exhibit 160** is a true and correct copy of “Idaho PCSRF Application Form – FY2005 (030505SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 8;
- j. Attached hereto as **Exhibit 161** is a true and correct copy of “Letter dated January 3, 2006 to Bruce McConnell (030505SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 9;
- k. Attached hereto as **Exhibit 162** is a true and correct copy of “Idaho PCSRF Application Form – FY2005 (03605SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 10;

- l. Attached hereto as **Exhibit 163** is a true and correct copy of “Letter dated January 3, 2006 to Bruce McConnell (03605SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 11;
- m. Attached hereto as **Exhibit 164** is a true and correct copy of “Idaho PCSRF Application Form – FY2005 (038055SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 12;
- n. Attached hereto as **Exhibit 165** is a true and correct copy of “Letter dated January 3, 2006 to Bill Hutchinson (03805SA),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 13;
- o. Attached hereto as **Exhibit 166** is a true and correct copy of “Idaho PCSRF Application Form – FY2006 (Unnumbered; Big Timber Reconnection and Upper Lemhi Flow Improvement),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 14;
- p. Attached hereto as **Exhibit 167** is a true and correct copy of Lemhi River Monitoring Plan; 2003 Annual Progress Report,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 15;
- q. Attached hereto as **Exhibit 168** is a true and correct copy of “Instream Flow Assessment Big Timber Creek,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 16;
- r. Attached hereto as **Exhibit 169** is a true and correct copy of “Lemhi River Sub-Basin Assessment (February 1998),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 17;

- s. Attached hereto as **Exhibit 170** is a true and correct copy of “Salmon and Steelhead Recovery for Idaho, Chapter 1 Recovery Plan Introduction (Draft),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 18;
- t. Attached hereto as **Exhibit 171** is a true and correct copy of “Letter dated June 28, 2002 transmitting Lemhi Conservation Agreement,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 19;
- u. Attached hereto as **Exhibit 172** is a true and correct copy of “Bull Trout Draft Recovery Plan; Chapter 1: Introduction,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 20;
- v. Attached hereto as **Exhibit 173** is a true and correct copy of “Bull Trout Draft Recovery Plan; Chapter 17: State(s): Idaho; Recovery Unit Name: Salmon River,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 21;
- w. Attached hereto as **Exhibit 174** is a true and correct copy of “Bureau of Land Management Salmon Field Office; 2004 Annual Water Temperature Report (Excerpt),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 22;
- x. Attached hereto as **Exhibit 175** is a true and correct copy of “Big Timber Creek Fisheries Report (August 2003),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 23F;
- y. Attached hereto as **Exhibit 176** is a true and correct copy of “Literature update on water temperature criteria for the protection of salmonid

resources,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 24;

- z. Attached hereto as **Exhibit 177** is a true and correct copy of “Screening an Habitat Improvement Prioritization for the Upper Salmon Subbasin,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 25;
- aa. Attached hereto as **Exhibit 178** is a true and correct copy of “50 C.F.R. § 17.95(e) (excerpt),” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 26;
- bb. Attached hereto as **Exhibit 179** is a true and correct copy of “50 C.F.R. § 226.205,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 27;
- cc. Attached hereto as **Exhibit 180** is a true and correct copy of “50 C.F.R. § 226.212,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 28;
- dd. Attached hereto as **Exhibit 181** is a true and correct copy of “Excerpt of BLM Edition Surface Management Status Leadore,” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 32;
- ee. Attached hereto as **Exhibit 182** is a true and correct copy of “U.S.G.S. Hydrology data for Big Timber Creek near Leadore, Idaho, for the period from May 12, 2004 through September 20, 2006” which was submitted as State of Idaho, Department of Fish and Game’s Exhibit 38.

Further your affiant sayeth naught.

DATED this 30<sup>th</sup> day of July, 2019.


LAWRENCE G. WASDEN  
Attorney General

DARRELL G. EARLY  
Deputy Attorney General  
Chief, Natural Resources Division

  
MICHAEL C. ORR  
Deputy Attorney General

SUBSCRIBED AND SWORN before me this 30<sup>th</sup> day of July, 2019.



  
Notary Public for Idaho  
Residing at: B Boise  
My Commission expires: 6/22/22

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 30<sup>th</sup> day of July 2019, I caused the original of the foregoing to be filed with the Idaho Department of Water Resources, and copies to be served upon the following, in the manner listed below:

1. Original to:

JAMES CEFALO IDAHO DEPARTMENT OF WATER RESOURCES 900 N. SKYLINE DR., STE A IDAHO FALLS, ID 83402-1718	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: 208-525-7177 <input checked="" type="checkbox"/> Email: <a href="mailto:james.cefalo@idwr.idaho.gov">james.cefalo@idwr.idaho.gov</a>

2. Copies to the following:

IDAHO DEPARTMENT OF WATER RESOURCES ATTN: JEAN HERSLEY, TECHNICAL RECORDS SPECIALIST II 322 E. FRONT STREET, SUITE 648 BOISE, ID 83720-0098	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile:
ROBERT L HARRIS HOLDEN, KIDWELL, HAHN & CRAPO PLLC 1000 RIVERWALK DR., STE 200 P.O. BOX 50130 IDAHO FALLS, ID 83405	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> Email: <a href="mailto:rharris@holdenlegal.com">rharris@holdenlegal.com</a>
MARIE CALLAWAY KELLNER MATTHEW A NYKIEL IDAHO CONSERVATION LEAGUE P.O. BOX 2308 SANDPOINT, ID 83864	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: <input checked="" type="checkbox"/> Email: <a href="mailto:mkellner@idahoconservation.org">mkellner@idahoconservation.org</a> <a href="mailto:mnykiel@idahoconservation.org">mnykiel@idahoconservation.org</a>
TRAVIS L THOMPSON BARKER ROSHOLT & SIMPSON LLP 163 SECOND AVE WEST	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express

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TWIN FALLS, ID 83303-0063



Facsimile:



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MICHAEL C. ORR